

Introduced by Senator Torres

February 20, 2014

An act to amend Section 1101 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1186, as introduced, Torres. Merger: conversion of nonredeemable common shares and equity securities.

Existing provisions of law provide for the merger of 2 or more corporations by approval of the board of each corporation of an agreement of merger. Existing law requires that the agreement contain the manner of converting the shares of each of the constituent corporations into shares or other securities of the surviving corporation, as specified.

Existing law specifies that the nonredeemable common shares or nonredeemable equity securities of a constituent corporation may be converted only into nonredeemable common shares of the surviving party or a parent party if, prior to the merger, a constituent corporation or its parent owns, directly or indirectly, shares of another constituent corporation representing more than 50 percent of the voting power of the other constituent corporation, unless all of the shareholders of the class in the first constituent corporation consent, as specified. Existing law exempts a short-form merger and the merger of a corporation into a specified subsidiary from this requirement.

This bill would repeal the latter exemption. The bill would also require that the nonredeemable common shares or nonredeemable equity securities of a constituent corporation be converted only into nonredeemable common shares of the surviving party or a parent party if, prior to the execution of the agreement of merger, a constituent

corporation or its parent owns, directly or indirectly, shares of another constituent corporation representing more than 50 percent of the voting power of the other constituent corporation, unless the majority of the holders of outstanding shares of the class in the first constituent corporation consent, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1101 of the Corporations Code is
2 amended to read:

3 1101. (a) The board of each corporation which desires to merge
4 shall approve an agreement of merger. The constituent corporations
5 shall be parties to the agreement of merger and other persons,
6 including a parent party (Section 1200), may be parties to the
7 agreement of merger. The agreement shall state all of the following:

8 ~~(a)~~

9 (1) The terms and conditions of the merger.

10 ~~(b)~~

11 (2) The amendments, subject to Sections 900 and 907, to the
12 articles of the surviving corporation to be effected by the merger,
13 if any. If any amendment changes the name of the surviving
14 corporation the new name may be the same as or similar to the
15 name of a disappearing domestic or foreign corporation, subject
16 to subdivision (b) of Section 201.

17 ~~(c)~~

18 (3) The name and place of incorporation of each constituent
19 corporation and which of the constituent corporations is the
20 surviving corporation.

21 ~~(d)~~

22 (4) The manner of converting the shares of each of the
23 constituent corporations into shares or other securities of the
24 surviving corporation and, if any shares of any of the constituent
25 corporations are not to be converted solely into shares or other
26 securities of the surviving corporation, the cash, rights, securities,
27 or other property which the holders of those shares are to receive
28 in exchange for the shares, which cash, rights, securities, or other
29 property may be in addition to or in lieu of shares or other securities

1 of the surviving corporation, or that the shares are canceled without
2 consideration.

3 (e)

4 (5) Other details or provisions as are desired, if any, including,
5 without limitation, a provision for the payment of cash in lieu of
6 fractional shares or for any other arrangement with respect thereto
7 consistent with the provisions of Section 407.

8 Each

9 (b) *Each* share of the same class or series of any constituent
10 corporation (other than the cancellation of shares held by a
11 constituent corporation or its parent or a wholly owned subsidiary
12 of either in another constituent corporation) shall, unless all
13 shareholders of the class or series consent and except as provided
14 in Section 407, be treated equally with respect to any distribution
15 of cash, rights, securities, or other property. Notwithstanding
16 ~~subdivision (d), except in a short-form merger, and in the merger~~
17 ~~of a corporation into its subsidiary in which it owns at least 90~~
18 ~~percent of the outstanding shares of each class, paragraph (4) of~~
19 ~~subdivision (a),~~ the nonredeemable common shares or
20 nonredeemable equity securities of a constituent corporation may
21 be converted only into nonredeemable common shares of the
22 surviving party or a parent party if a constituent corporation or its
23 parent owns, directly or indirectly, ~~prior to the merger~~ shares of
24 another constituent corporation representing more than 50 percent
25 of the voting power of the other constituent corporation prior to
26 ~~the execution of the agreement of merger, unless all of the~~
27 ~~shareholders of the class consent is obtained from the holders of~~
28 ~~at least a majority of outstanding shares of the class not held by~~
29 ~~the first constituent corporation or its parent~~ and except as
30 provided in Section 407.